

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES E. MOSCONY and	:	CIVIL ACTION
PATRICIA A. MOSCONY	:	
	:	
v.	:	
	:	
QUAKER FARMS, LP, QUAKER	:	
DEVELOPMENT CORP. and	:	
EDWARD W. WEINGARTNER, JR.	:	NO. 00-2285

MEMORANDUM ORDER

The dispute in this case arises out of an agreement for the sale of land and the construction of a house on that land.

Defendants are engaged in the business of real estate development. On May 14, 2000 plaintiffs and defendants entered an "Agreement of Sale" whereby plaintiffs agreed to purchase from defendants a parcel of land in a residential subdivision upon which defendants agreed to construct a residence (the "Agreement"). The Agreement provided that settlement would take place "no longer than six (6) months after the date of this Agreement," but also provides that "time is not of the essence" and grants defendants the right to extend the settlement date in the event of delays from occurrences largely out of their control.

The Agreement confers on defendants a right to terminate it at any time. The Agreement provides that if defendants elect to terminate or they breach the Agreement, the sole remedy available to plaintiffs shall be the return of their deposit without interest. The Agreement provides that it is to

be construed under the laws of Pennsylvania.

Plaintiffs allege that defendants have refused to complete construction of the house unless plaintiffs pay for certain optional features in an amount exceeding that agreed to. They have asserted claims for breach of contract, unfair or deceptive trade practices under Pennsylvania's consumer protection statute (the UTPCPL) and for violation of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§ 1701 et seq. ("ILSFDA"). The latter claim provides the sole basis for original federal subject matter jurisdiction. Defendants have filed a Motion to Dismiss for Lack of Jurisdiction.

The purpose of the ILSFDA is to ensure full disclosure of facts important to the purchasing decisions of prospective buyers of subdivision lots. See Cost Control Marketing & Management, Inc. v. Pierce, 848 F.2d 47, 48 (3d Cir. 1988); Pierce v. Apple Valley, Inc., 597 F. Supp. 1480, 1484 (S.D. Ohio 1984). The Act contains several exemptions for certain types of real estate developments and transactions. Among these is an exemption for any sale of land obligating the seller to erect a building thereon within a period of two years. See 15 U.S.C. § 1702(a)(2).

Defendants contend that they are exempt from compliance under the Act because the Agreement obligated them to erect a house for plaintiffs within two years. They cite to the language

providing for settlement within six months of the signing of the Agreement. Defendants also contend that they "do not engage in interstate commerce" as they "do all of their business within the Commonwealth of Pennsylvania."

Regardless of when settlement is scheduled or even completed, a defendant will only qualify for an exemption under 15 U.S.C. § 1702(a)(2) if the contract obligates it to perform within two years. See Markowitz v. Northeast Land Co., 906 F.2d 100, 104-05. (3d Cir. 1990). Where the buyer's sole remedy for the seller's termination of the contract is the return of deposit money, the contract does not obligate the seller to perform. See id. at 106. For a developer to qualify for the exemption, "the contract must not allow nonperformance by the seller at the seller's discretion." Id. at 104 (quoting 24 C.F.R. Ch. X, Part 1710, App. A, Part IV(b) (1989)). Under Pennsylvania law, specific performance cannot apply to such an agreement where there is an express limitation of remedies. See id. at 105-06.

The Agreement in this case limits plaintiffs' remedy to the return of their deposit, and does not obligate defendants to complete the house within two years. Defendants thus do not qualify for an exemption under § 1702(a)(2).

Even accepting defendants' unsupported assertion that they do business only in Pennsylvania, it does not follow that they do not engage in "interstate commerce." The Act applies to

any developer or agent who directly or indirectly makes use of any means or instruments of transportation or communication in interstate commerce, including the mails. See 15 U.S.C. § 1703(a). Defendants have not demonstrated or even suggested that they obtain no supplies or materials transported from another state or that they refrain from using the mails to conduct their business.

ACCORDINGLY, on this day of November, 2000, upon consideration of defendants' Motion to Dismiss Plaintiffs' Complaint for Lack of Jurisdiction (Doc. #5) and plaintiffs' response, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.